

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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PIVOTAL PAYMENTS, INC.,

Plaintiff,

-against-

FVA VENTURES, INC., d/b/a Visalus Sciences, and
BLYTH, INC.,

Defendants.
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FEUERSTEIN, District Judge:

ORDER

11-CV-513(SF)(ARL)

FILED
IN CLERK'S OFFICE
U S DISTRICT COURT E D N Y

★ SEP 06 2012 ★

LONG ISLAND OFFICE

Pending before the Court is the Report and Recommendation ("the Report") of Magistrate Judge Arlene R. Lindsay, dated July 30, 2012, recommending that defendants' motion to dismiss the Amended Complaint for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure be granted; that defendants' motion to dismiss the Amended Complaint for failure to state a claim pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure be denied as moot; and that plaintiff's motion for leave to file a Second Amended Complaint be denied. No objections to the Report have been filed. For the reasons stated herein, the Court accepts Magistrate Judge Lindsay's Report in its entirety.

I. Standard of Review

Any portion of a report and recommendation on dispositive matters, to which a timely objection has been made, is reviewed *de novo*. 28 U.S.C. § 636(b)(1); Fed.R.Civ.P. 72(b). The court, however, is not required to review the factual findings or legal conclusions of the magistrate judge as to which no proper objections are interposed. See, Thomas v. Arn, 474 U.S. 140, 150, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985). To accept the report and recommendation of a magistrate judge to which no timely objection has been made, the district judge need only be satisfied that there is no clear error on the face of the record. See, Fed. R. Civ. P. 72(b); Spence v. Superintendent, Great Meadow Correctional

Facility, 219 F.3d 162, 174 (2d Cir. 2000) (a court may review a report to which no timely objection has been interposed to determine whether the magistrate judge committed “plain error.”); Johnson v. Goord, 487 F.Supp.2d 377, 379 (S.D.N.Y. 2007), aff’d, 305 Fed. Appx. 815 (2d Cir. 2009). Whether or not proper objections have been filed, the district judge may, after review, accept, reject, or modify any of the magistrate judge's findings or recommendations. 28 U.S.C. § 636(b)(1); Fed.R.Civ.P. 72(b).

II. Review of Report

No party has filed any objection to Magistrate Judge Lindsay’s Report. Upon review, the Court is satisfied that the Report is not facially erroneous. Accordingly, the Court accepts Magistrate Judge Lindsay’s Report as an Order of the Court.

III. Conclusion

Magistrate Judge Lindsay’s Report is accepted in its entirety; defendants’ motion to dismiss the Amended Complaint pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure is granted; the Amended Complaint is dismissed in its entirety without prejudice for lack of subject matter jurisdiction; defendants’ motion to dismiss the Amended Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure is denied as moot; and plaintiff’s motion for leave to file a Second Amended Complaint is denied. The Clerk of the Court shall enter judgment in favor of defendants and close this case.

SO ORDERED.

s/ Sandra J. Feuerstein

Sandra J. Feuerstein
United States District Judge

Dated: September 6, 2012
Central Islip, New York